



November 22, 2002

Captain Randy Traylor  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2002-6726

Dear Captain Traylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172679.

The Williamson County Sheriff's Office (the "sheriff") received a request for information relating to two internal affairs investigations. We have reviewed your comments and have reviewed the information you submitted.

We first note that the sheriff has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

In this instance, you have not stated any exception to disclosure that the sheriff believes is applicable to the requested information. Thus, the sheriff has not complied with section 552.301(b) in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Generally, there is a compelling reason for non-disclosure under section 552.302 when the information is confidential by law or where third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. – El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the summary must be released under *Ellen*, but the identities of the victims and witnesses must be redacted, and their detailed statements must be withheld from disclosure. *See also* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, all of the information relating to the investigation ordinarily must be released, with the exception of information that would tend to identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, the requested information relates to two investigations of alleged sexual harassment. Accordingly, we find that *Morales v. Ellen* is applicable to this information. We also find that the requested information includes adequate summaries of the investigations. We have marked the investigation summaries. The sheriff must release the investigation summaries in accordance with *Ellen*, except for the marked information in the summaries that identifies the victims and witnesses of the alleged sexual harassment. The sheriff must withhold the marked victim and witness information, as well as the other records that relate to the investigations, under section 552.101 in conjunction with common-law privacy under *Ellen*.

One of the investigation summaries also contains information that the sheriff must withhold under section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with sections 552.024 or 552.1175. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked the information that the sheriff must withhold under section 552.117(2).

In summary, the marked information in the investigation summaries and the other records of the investigations are protected by common-law privacy under *Ellen* and must be withheld under section 552.101 of the Government Code. The sheriff also must withhold the marked information that is excepted from disclosure under section 552.117. The remaining information in the investigation summaries must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

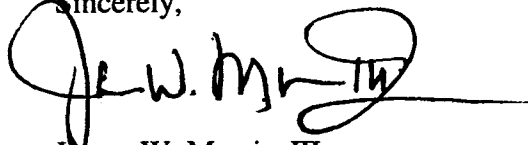
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 172679

Enc: Marked documents

c: Ms. Belinda Bartz  
c/o Captain Randy Traylor  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626  
(w/o enclosures)